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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JENNY RUBIN DEBORAH RUBIN DANIEL
MILLER ABRAHAM MENDELSON STUART E
HERSH RENAY FRYM NOAM ROZENMAN
ELENA ROZENMAN and TZVI ROSENMAN

M19-63

Plaintiffs Judgment
Creditors

against

THE ISLAMIC REPUBLIC OF IRAN (a/k/a/ Iran
The Republic of Iran Republic of Iran The
Government of Iran Iranian Government and
Imperial Government of Iran) THE IRANIAN
MINISTRY OF INFORMATION AND SECURITY
AYATOLLAH ALI HOSEINI KHANENEI ALI
AKBAR HASHEMI RAFSANJANI and ALI
FALLAHIAN KHUZESTANI

Defendants Judgment
Debtors

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DECLARATION OF CLAUDE J NEBEL

CLAUDE J NEBEL pursuant to 28 U S C § 1746 declares the following under
penalty of perjury

1 I am the Deputy Assistant Secretary of the Office of Foreign Missions (OFM)

of the Department of State I have held this position since January 2007 I am a Career Foreign Service Officer rank of Senior Foreign Service Counselor and I have been employed by the U S Department of State since September 1987

2 I make this declaration based upon information within my personal knowledge or known to me through my official responsibilities in the Department of State

3 OFM was established under the Foreign Missions Act 22 U S C §§ 4301 et seq. (the FMA) in 1982 OFM is headed by a Director with the rank of ambassador 22 U S C § 4303 and carries out the purposes of the FMA as determined by the Secretary of State (the Secretary) Pursuant to Delegation of Authority No 214 the Secretary has delegated to the Director of OFM the authorities vested in the Secretary under the FMA with the exception of certain functions not relevant here See 59 Fed Reg 50 790 (1994) (Attached as Exhibit 1) Among the discretionary authorities conferred upon the Secretary under the FMA and delegated to the Director is the ability to confer or deny the provision of benefits for or on behalf of a foreign mission See 22 U S C § 4304 OFM additionally reviews notifications of real property acquisitions by a foreign mission and is empowered to disapprove or veto a proposed acquisition 22 U S C § 4305 OFM also performs such other functions as the Secretary determines are in furtherance of the FMA

4 Among its authorities and responsibilities OFM is responsible for the custody and protection of properties owned by certain foreign missions in the United States including the Government of Iran See 22 U S C § 4305(c) Under the FMA the term foreign missions includes the diplomatic and consular missions of a foreign government 22 U S C § 4302(a)(3)(A) In my position as Deputy Director of OFM I and my staff have been responsible for the protection and maintenance of the diplomatic and consular properties of the Government

of Iran OFM has had this responsibility since its creation in 1982

Severance of Diplomatic Relations with Iran

5 On November 14 1979 pursuant to the International Emergency Economic Powers Act 50 U S C §§ 1701 et seq. and other authorities the President issued Executive Order 12170 blocking all Iranian assets in the United States The United States permitted Iran to occupy its Embassy consulates and diplomatic residences consistent with the United States obligations under the Vienna Conventions on Diplomatic and Consular Relations

6 On April 7 1980 President Carter pursuant to his constitutional authority to conduct foreign affairs severed diplomatic relations with Iran and stated that the Secretary of State had informed the Government of Iran that its Embassy and consulates in the United States were to cease their activities immediately and that all Iranian diplomatic and consular officials had been declared persona non grata and were to leave the United States by midnight of the following day By diplomatic note dated April 7 1980 the Secretary of State informed the Embassy of Iran that on April 8 1980 the Embassy and consulates would be closed and sealed except to the extent that the Department may authorize any particular use of such premises by a protecting power See Digest on United States Practice in International Law U S Department of State 1980 at 40-41 333 334 (Attached as Exhibit 2)

7 Further to his decision to sever diplomatic relations with Iran on April 7 1980 President Carter sent a memorandum to the Secretary of the Treasury which stated In connection with my decision today to close Iranian diplomatic facilities in the United States I am directing that the Uniformed Division of the Secret Service provide any assistance necessary to the Secretary of State and the Attorney General in order to make my decision effective

including control of movement of persons and property into and out of Iranian diplomatic facilities in the District of Columbia 1 Public Papers of Presidents of the United States Jimmy Carter 1980-81 at 612 (1981) (Attached as Exhibit 3)

8 On April 14, 1980, the Department of State approved Algeria as the protecting power for Iranian interests in the United States.¹ In an Aide Memoire dated April 18, 1980, which reflected the arrangements agreed upon by the United States and Iran for the acceptance of Algeria as Iran's protecting power, the Department informed Algeria that the United States would retain custody of the Iranian official premises in the United States until the United States or a protecting power on its behalf regained its premises in Iran. In response to the Algerian Embassy's request that the United States ensure the safety and protection of Algerian diplomatic premises and those formerly occupied by the Iranian Embassy and consulates, the Department of State assured the Embassy of Algeria by diplomatic note dated April 29, 1980, that it would take all appropriate measures for the safety and protection of such diplomatic and consular premises in the United States. See Digest on United States Practice in International Law, U.S. Department of State, 1980, at 337-338 (Attached as Exhibit 4). Although the Department of State approved Algeria and then Pakistan as the protecting powers for Iranian interests in the United States, it never approved those countries as protecting powers to be responsible for the property of Iran's foreign missions.

9 Article 45 of the Vienna Convention on Diplomatic Relations provides that if a mission is permanently or temporarily recalled, the receiving State must, even in the case of armed conflict, respect and protect the premises of the mission, together with its property and archives. Article 45 provides further that the sending State may entrust the custody of the premises of the mission, together with its property

¹ Algeria is no longer the protecting power for Iranian interests in the United States. Pakistan now serves that capacity.

and archives to a third State acceptable to the receiving State. Similarly, Article 27 of the Vienna Convention on Consular Relations provides that in the event of severance of consular relations between the two States, the receiving State shall, even in the case of armed conflict, respect and protect the Consular premises together with the property of the consular post and the consular archives. Article 27 provides further that the sending State may entrust the custody of the premises together with the property contained therein and the consular archives to a third State acceptable to the receiving State.

Refusal by the United States to turn over the Iranian diplomatic and consular properties to Algeria, Iran's protecting power, was a reciprocal action taken in response to Iran's breach of its obligations under the Vienna Conventions to respect and protect the diplomatic and consular properties of the United States and to permit Switzerland, the United States' protecting power in Iran, to assume custody of those properties. See Department of State Diplomatic Note dated March 10, 1983 (Attached as Exhibit 5).

10 Thus, pursuant to Article 45(a) of the Vienna Convention on Diplomatic Relations and Article 27(1)(a) of the Vienna Convention on Consular Relations, the United States has a continuing duty to respect and protect Iran's diplomatic and consular properties from the date that the Department of State took custody of them in April 1980. Additionally, since its creation in 1982, OFM has undertaken to preserve and protect these properties as properties of a foreign mission pursuant to 22 U.S.C. § 4305(c)(1). These properties remain blocked pursuant to Executive Order 12170 (Nov. 14, 1979), 44 Fed. Reg. 65,729 (Nov. 14, 1979).

Rental of Diplomatic and Consular Real Properties

11 In order to fulfill the U.S. obligation under the Vienna Conventions to protect and preserve Iran's diplomatic and consular real property, OFM began to look at ways to maintain the property, examining both short-term and long-term alternatives. OFM determined that the

real properties could not be adequately maintained over any significant period of time if not occupied OFM concluded that if the properties were left vacant they would be susceptible to break in damage and deterioration OFM also determined that rental of the properties would provide a source of funds for essential maintenance and repairs necessary to supplement the scarce appropriated funds available for these activities OFM therefore decided to rent Iran's diplomatic and consular properties in furtherance of the U.S. obligation to protect the properties under the Vienna Conventions and duly notified Iran's protecting power In a March 10 1983 Diplomatic Note to Algeria referenced above the United States advised that it intended to rent out some of Iran's properties in order to protect Iran's interest in these properties See Exhibit 5

12 Thus all of OFM's actions in connection with the maintenance and rental of Iran's diplomatic and consular property have been and continue to be taken exclusively for diplomatic and consular purposes as such actions are in furtherance of obligations of the United States as the receiving State to protect the property pursuant to the Vienna Conventions All of the proceeds from the rental of these properties that are not necessary for maintenance and repair of the properties are deposited in a blocked Iranian diplomatic and consular account and are not used for any other purposes

13 OFM protects and preserves the Iranian diplomatic properties in a manner consistent with the office's management of other countries' diplomatic properties when in the absence of diplomatic relations custody has not been turned over to a protecting power For example OFM renovated the diplomatic properties of Cambodia and Vietnam and began renting them out in 1985 and 1986 respectively in furtherance of U.S. obligations under Article 45 of the Vienna Convention on Diplomatic Relations These properties retained their diplomatic character during the period in which they were rented and were later returned to Cambodia and

Vietnam upon restoration of diplomatic relations with both countries and the conclusion of appropriate agreements in 1994 and 1995 respectively. As part of the 1995 agreement and as a direct result of the United States' actions in protecting Vietnam's properties, Vietnam returned to the United States numerous U.S. diplomatic properties in Vietnam. Similarly, OFM considers that the current maintenance and protection of the Iranian properties pursuant to the U.S. obligations under the Vienna Conventions will be critical in the event that the United States and Iran reestablish diplomatic relations. As with Vietnam, continued maintenance and protection of the Iranian properties will advance the ability of the United States to retake possession or receive appropriate compensation for its diplomatic and consular property located in Iran.

14 OFM is in custody of 12 diplomatic and consular properties of Iran. OFM began leasing the properties in October 1983 following some initial maintenance and renovation. By December 1985, all of the properties with the exception of one had been rented.

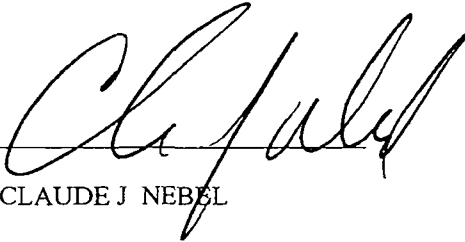
15 The property at 34 East 69th St. in New York, New York was purchased by the Government of Iran in 1969. At the time of issuance of Executive Order No. 12170 until April 8, 1980, it was used as the residence of the Consul General of Iran in New York. OFM has determined that the appropriate way for the United States, as receiving State, to discharge its obligation to protect the property under Article 27 of the Vienna Convention on Consular Relations is to have the property occupied and generating income needed for maintenance and repair. The property has been rented to a number of tenants and is currently leased to a private party.

Claims Before The Iran U.S. Claims Tribunal

16 The United States' control over the Iranian diplomatic and consular properties is the subject of claims by Iran against the United States before the Iran U.S. Claims Tribunal in The Hague, The Netherlands, established pursuant to the Algiers Accords, which entered into force on

January 19 1981 (Iran v United States, Case Nos A/4 A/7 A/15 (I F&III)) Collectively the Algiers Accords constitute an international agreement between the United States and Iran which brought about an end to the hostage crisis See Department of State Explanation of Algiers Accords (Attached as Exhibit 6) The Algiers Accords established the Tribunal to hear in part, certain claims between the two governments Iran argues that the Algiers Accords require the United States to return to its custody and control Iran's diplomatic and consular properties without regard to Iran's obligations under international law to return to U S custody U S diplomatic and consular properties in Iran The United States takes the position before the Tribunal that the Algiers Accords do not require the transfer of Iran's diplomatic and consular property but rather that such property is subject to the reciprocal obligations of the two governments under the Vienna Conventions Continued U S custody of Iran's diplomatic and consular properties and continued U S management of the real properties in furtherance of its obligation to protect these properties under the Vienna Conventions are essential to preserving the U S position on the current status of the diplomatic and consular properties of the two governments under the Vienna Conventions

I declare under penalty of perjury that the foregoing is true and correct Executed on this 5th day of December 2007



CLAUDE J NEBEL